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PCHB No. 89-152

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FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

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1 Wainwright, Cheney, Washington. Court reporter Caryn E. Winters of
2 C.W. Court Reporting recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined and
4 admitted. From testimony, exhibits and contentions of the parties,
5 the Board makes these:

6 FINDINGS OF FACT

7 I

8 On October 22, 1989, Keith G. Carpenter, environmental engineer
9 for Spokane County Air Pollution Control Authority (SCAPCA) arrived at
10 East 4515 - 29th, Spokane at 7:40 p.m., where there were two open
11 fires. He had seen flames from two miles away. One fire was
12 approximately 40 feet by 20 feet and the other about 20 feet by 20
13 feet, about 60 feet apart. Both were unattended at the time. Both
14 fires contained prohibited materials, including a tricycle with its
15 tires, an appliance, junk metal, plastics, furniture and rubbish.
16 There was a lot of smoke.

17 II

18 Mr. Hitchcock was located at his residence. He did not interrupt
19 his activities to put out the fire or call the fire department,
20 claiming that the fires were now under control.

21 III

22 The inspector left and called Fire District 8, which responded at
23 8:15 p.m. When the firemen arrived, Mr. Hitchcock was trying to put
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1 out the fires with a single garden hose, but his efforts were not
2 effective. The fire department used its entire tank truck load,
3 approximately 800 gallons of water, to control the fires. The fire
4 fighters returned to the fire station at 8:51 p.m. One fire was still
5 smoldering the next day.

6 IV

7 SCAPCA sent a Notice of Violation No. 4354 to Mr. Hitchcock by
8 certified mail, received on October 31, 1989, assessing a \$100 fine.
9 The Notice alleged violation of open burning laws: SCAPCA Regulation
10 1, Article VI, Section 6.01, and Chapt. 173-425 WAC.

11 Mr. Hitchcock filed an appeal with this Board which became
12 PCHB No. 89-152.

13 V

14 The Hitchcocks wanted to burn some tree limbs. Mrs. Susan
15 Hitchcock checked with SCAPCA and learned that they were in an area
16 where open burning was allowed.

17 Mr. Hitchcock set one fire about eight to ten feet away from a
18 rubbish pile, about 100 feet from his house. He did not check to see
19 if the ground was solid. When he thought the fire had burned out,
20 close to 5:00 p.m., he started the second fire. Six to eight feet of
21 ground had been cleared around this fire.

22 Only one garden hose, with four to five linked sections, was
23 available to control these fires. But the first fire was not out. It
24

1 went underground and emerged to burn the rubbish and other material.
2 The second fire also left its immediate area and began burning the
3 tricycle, appliances, etc. Appellant decided it was best to let the
4 fires continue to burn, believing they were under control, and he went
5 inside for dinner.

6 VI

7 Any Conclusion of Law which is deemed a Finding of Fact is hereby
8 adopted as such.

9 From these Findings of Fact, the Board enters the following:

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over the parties and the subject
13 matter. Chapters 43.21B and 70.94 RCW.

14 II

15 The state policy on open burning states:

16 It is the policy of the state to achieve and maintain
17 high levels of air quality and to this end to minimize
18 to the greatest extent reasonably possible the burning
19 of outdoor fires. Consistent with this policy, the
20 legislature declares that such fires should be allowed
only on a limited basis under strict regulation and
close control. RCW 70.94.740.

21 Local air pollution control authorities are authorized to adopt
22 regulations. RCW 70.94.755.

23 III

24 SCAPCA Regulation 1, Article VI, Section 6.01 states in pertinent
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part:

EMISSIONS PROHIBITED

SECTION 6.01 OPEN FIRES

- A. Purpose. This rule, promulgated under chapter 70.94 RCW, the Washington State Clean Air Act, authorizes the Spokane County Air Pollution Control Authority to implement the provisions of that act. [. . .]
- D. Prohibited materials. Except as provided in Subsection F, the following materials shall not be burned in any open fire:

1. Garbage;
2. Dead animals;
3. Asphaltic products;
4. Waste petroleum products;
5. Paints;
6. Rubber products;
7. Plastics;
8. Any substance, other than natural vegetation, which normally emits dense smoke or obnoxious odors. [WAC 173-425-045 is the same.]

[. . .]

G. Residential Open Burning.

1. No open fire shall be allowed on the premises of any residence:

[. . .]

- c. If the fire contains prohibited materials, as given in Subsection D.
- d. If the fire contains any material other than natural vegetation; or
- e. If the fire is larger than a small fire.

The premises of a residence include the real property immediately adjacent to the residence

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1 which is owned by the same person who owns the
2 residence, and which is not devoted to agriculture
3 use, other than yard and gardening activities
connected with the residence. [WAC 173-425-065 is
the same.]

4 2. Single small fires on the premises of a residence
5 may be allowed to dispose of yard and garden
debris if:

6 a. None of the provisions of Subsection G.1. are
7 violated;

8 [. . .]

9 b. Means of extinguishment are readily available;

10 c. Such fires are attended at all times by a
person capable of extinguishing them;

11 [. . .]

12 d. Such fires are [. . .] at an adequate
13 distance from [. . .] other combustible
14 materials. Fifty (50) feet is the minimum desired
distance separating fires and combustible
materials.

15 g. Burning shall be done between the hours of
16 9:00 a.m. and 5:00 p.m.

17 The definition of small fire is: one not more than four feet in
18 diameter or three feet high. Article I, Section 1.04 NN.
19 (WAC 173-425-030(10) is the same.)

20 IV

21 The Washington Clean Air Act is a strict liability statute. Acts
22 violating its implementing regulations and the local air pollution
23 authority regulations are not excused on the basis of absence of
24

1 intent. RCW 70.94.040. Industrial Maintenance and Construction, Inc.
2 v. PSAPCA, PCHB No. 87-179 (1988).

3 V

4 We conclude that Appellant Hitchcock has violated Regulation 1,
5 (and parallel provisions in Chapt. 173-425 WAC) at:

6 6.01 D. and G.1.c and d, and G.2. Burning prohibited materials.
7 Once Hitchcock started the fires, he was responsible for the
8 consequences of these fires.

9 6.01 G.1.e. and 1.01 NN Not a small fire.

10 6.01 G.2. More than one fire was set.

11 6.01 G.2.b. Means of extinguishment were not readily available.
12 The garden hose was inadequate to extinguish.

13 6.01 G.2.c. The fires were not at an adequate distance from
14 combustible materials; not 50 feet from such material.

15 6.01 G.2.g. Burning not done between 9:00 a.m. and 5:00 p.m.
16 The fires continued after 5:00 p.m. The second one was lighted close
17 to 5:00 p.m.

18 VI

19 A fine of \$100 was assessed. The maximum civil penalty is
20 \$1,000. Regulation 1, Article II, 2.11.B.1. We conclude that the
21 fine, one-tenth of the maximum, was justified. Mr. Hitchcock
22 demonstrated a cavalier approach to burning. He violated numerous
23 provisions in significant ways. The fine is reasonable to promote
24

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1 future compliance.

2 VII

3 Any Finding of Fact which is deemed a Conclusion of Law, is
4 hereby adopted as such.


5 From these Conclusions of Law the Board enters this
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ORDER

The Notice of Violation and civil penalty (\$100) is AFFIRMED.
DONE this 12th day of March, 1990.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


JUDITH A. BENDOR, Chair